

UNITED STATES DISTRICT COURT
Northern District of California

ELAINA SEROTTE,

No. C 10-04353 MEJ

Plaintiff(s),

**ORDER FOR CLERK OF COURT TO
REASSIGN CASE**

v.

MARIN COUNTY DISTRICT ATTORNEY,

REPORT & RECOMMENDATION

Defendant(s).

On September 27, 2010, Plaintiff Elaina Serotte filed the above-captioned case. (Dkt. #1.)

Although a case management conference was scheduled to take place on January 13, 2011, the Court vacated the conference date on January 7, 2011, because no case management statement had been filed and there was no indication that any of the defendants have been served. Accordingly, the Court ordered Plaintiff to file a status report by January 20, 2011. (Dkt. #4.) Plaintiff failed to respond. Based on Plaintiff's inaction, the Court ordered Plaintiff to show cause why this case should not be dismissed for failure to prosecute and comply with court deadlines. The Court ordered Plaintiff to file a declaration by February 24, 2011, and scheduled an order to show cause hearing on March 3, 2011. (Dkt. #5.) Plaintiff again failed to respond.

Based on this procedural history, the Court finds it appropriate to dismiss this case pursuant to Federal Rule of Civil Procedure 41(b). Under Rule 41(b), failure to comply with a court order can warrant dismissal. *See Ferdik v. Bonzelet*, 963 F.2d 1258, 1260 (9th Cir. 1992). In "determining whether to dismiss a case for failure to comply with a court order, the district court must weigh five factors including '(1) the public's interest in expeditious resolution of litigation; (2) the court's need to manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of cases on their merits; and (5) the availability of less drastic alternatives.'" *Id.* at 1260-

61 (quoting *Thompson v. Housing Auth.*, 782 F.2d 829, 831 (9th Cir. 1986)). Here, Plaintiff failed to comply with Court orders and deadlines, failed to respond to the order to show cause, and has made no appearance in this matter since filing her complaint. Thus, the Court finds that the *Ferdik* factors weigh in favor of dismissal.

Accordingly, because Plaintiff has yet to consent to the undersigned's jurisdiction, the Court hereby ORDERS the Clerk of Court to reassign this case to a district court judge. The undersigned RECOMMENDS that the newly-assigned judge dismiss this case for failure to prosecute and failure to comply with the Court's deadlines and orders.

Pursuant to Federal Rule of Civil Procedure 72, any party may serve and file objections to this Report and Recommendation within 14 days after being served.

IT IS SO ORDERED AND RECOMMENDED.

Dated: February 25, 2011



Maria-Elena James
Chief United States Magistrate Judge